

EN BANC

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

CA05-1048

April 12, 2006

NINA DELT and CLARENCE DELT
APPELLANTS

v.

GRANT BOWERS, DAVID BOWERS,
MINTA JANE BOWERS, UNITED AUTOMOBILE
AEROSPACE, and AGRICULTURAL IMPLEMENT
WORKERS of AMERICA, and UAW LOCAL 716
APPELLEES

AN APPEAL FROM SEBASTIAN COUNTY
CIRCUIT COURT
[NO. CIV2003-1411-I]

HONORABLE NORMAN WILKINSON,
CIRCUIT JUDGE

APPEAL DISMISSED

PER CURIAM

This is a negligence action filed by appellants Nina and Clarence Delt. According to their complaint, on March 25, 2002, Mrs. Delt was participating in a picket line organized by appellees United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), and the UAW Local 716. As she walked from the picket area to her car across the street, she was struck by a vehicle owned by appellees David and Minta Jane Bowers and driven by their son, appellee Grant Bowers. On September 29, 2003, Mr. and Mrs. Delt sued all five appellees, and on June 16, 2005, the UAW and the Local 716 obtained a summary judgment, from which the Delts now appeal. However, because the Delts' claim against the three Bowers defendants remains pending and because the order appealed from does not contain a proper Rule 54(b) certificate, we dismiss the appeal.

The summary judgment in favor of UAW and Local 716 recites that they are entitled to judgment as a matter of law and that the Delts' complaint against them is dismissed. It then states the following:

RULE 54(b) CERTIFICATE

The Court hereby certifies, in accordance with Rule 54(b) of the Arkansas Rules of Civil Procedure, that it has determined there is no just reason for delay of the entry of a final judgment, and that the Court hereby directs a final judgment of dismissal with prejudice of Plaintiffs' claims against the United Automobile, Aerospace, and Agricultural Implement Workers of America and UAW Local 716.

This Court shall maintain jurisdiction of Plaintiffs' claims against Grant Paddock Bowers, David Bowers, and Minta Jane Bowers, but such proceedings shall be stayed pending the results of Plaintiffs' appeal or pending further order of this Court.

While the above certificate attempts to certify an interlocutory appeal, it does not set forth specific factual reasons why an appeal may proceed at this point. Rule 54(b)(1) of the Arkansas Rules of Civil Procedure provides that a trial court may direct the entry of final judgment as to fewer than all of the parties "only upon an express determination, *supported by specific factual findings*, that there is no just reason for delay and upon an express direction for the entry of judgment." (Emphasis added.) The Rule 54(b) certificate must "set forth the factual findings upon which the determination to enter the judgment as final is based." Ark. R. Civ. P. 54(b)(1) (2005). Where a Rule 54(b) certificate does not contain specific factual findings upon which the decision to enter a final judgment was based, it does not conform to the requirements of the rule and is therefore ineffective to certify the appeal. *See Stouffer v. Kralicek*, 81 Ark. App. 89, 98 S.W.3d 475 (2003). A violation of Rule 54(b) relates to our subject-matter jurisdiction, and we therefore will raise the issue on our own, even if the parties do not. *See Coleman v. Regions Bank*, ___ Ark. ___, ___ S.W.3d ___ (Nov. 3, 2005); *Strack v. Capital Services Group, Inc.*, 87 Ark. App. 202, ___ S.W.3d ___ (2004).

Because the certificate in this case does not conform to the requirements of Rule 54(b), in that it fails to set forth specific factual findings as to why a final judgment should be entered, we dismiss the appeal without prejudice. *See Stouffer v. Kralicek, supra*.

Dismissed without prejudice.